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Zoning Map Amendment Petition

A-9980

Application	General Data
Project Name: Brandywine Crossing Location: East side of US 301/MD 5, north and south side of Matapeake Business Drive Applicant/Address: FCD—Development, LLC 7920 Norfolk Avenue, Suite 800 Bethesda, Maryland 20814	Date Accepted: 3/1/06
	Planning Board Action Limit: N/A
	Plan Acreage: 52.7
	Zone: I-1, I-3
	Dwelling Units: N/A
	Square Footage: 500,000
	Planning Area: 85A
	Tier: Developing
	Council District: 09
	Municipality: N/A
200-Scale Base Map: 220SE07	

Purpose of Application	Notice Dates
Rezoning from I-1 and I-3 to C-S-C	Adjoining Property Owners Previous Parties of Record Registered Associations: 1/18/06 (CB-12-2003)
	Sign(s) Posted on Site and Notice of Hearing Mailed: @

Staff Recommendation		Staff Reviewer: Reggie Baxter	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

April 26, 2006

TECHNICAL STAFF REPORT

TO: The Prince George's County Planning Board
The Prince George's County District Council

VIA: Jimi Jones, Acting Zoning Supervisor

FROM: Reggie Baxter, Planning Coordinator

SUBJECT: **Zoning Application A-9980**

REQUEST: Rezoning from the I-1 (Light-Industrial) and I-3 (Planned Industrial Park) Zones to the C-S-C (Commercial Shopping Center) Zone

RECOMMENDATION: **DISAPPROVAL**

NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

FINDINGS:

- A. **Location and Field Inspection:** The subject site is located along the east side of Crain Highway (US 301), to the north and south of Matapeake Business Drive. The property is part of the Brandywine 301 Business Park that is subdivided into large parcels with infrastructure in place. Access to the business park and subject property is from Matapeake Business Drive, which has a signalized intersection with US 301/MD 5.

The subject site comprises three parcels south of Matapeake Business Drive, one of which is used for vehicle and trailer auctions. It includes seven undeveloped parcels to the north and west of Matapeake Business Drive, three of which have frontage on a paper street (Timothy Branch Drive). Also included are five subdivided lots that have frontage on US 301/MD 5 and are undeveloped.

The property includes a small wooded stream channel along US 301/MD 5, 100-year floodplain south of Matapeake Business Drive, stormwater management ponds and nontidal wetlands. US 301/MD 5 is a nearby source of traffic-generated noise. The “Prince George’s County Soil Survey” indicates existing Beltsville, Chillum and Leonardtown soil series. These soils are hydric, and may be affected by perched water tables, impeded drainage, and poor drainage. Marlboro clay does not occur on or in the vicinity of this site. There are no designated scenic or historic roads or rare, threatened, or endangered species found to occur in the vicinity of this property. The site is located in the Mattawoman Creek watershed of the Potomac River basin. According to the approved Countywide Green Infrastructure Plan, the site contains regulated areas, evaluation areas and network gaps.

- B. **History:** The 1978 Brandywine-Mattawoman Sectional Map Amendment (SMA) rezoned the subject site from the R-R (Rural Residential) Zone to the E-I-A (Employment-Industrial-Area) Zone. In 1985, the site was rezoned with conditions through Zoning Map Amendment A-9502-C from the E-I-A Zone to the I-1 and I-3 Zones. The following conditions were also approved:

- “1. No corrugated metal or cinder block structures shall be visible from either MD Route 301 or Cedarville Road.
- “2. All lots fronting on Cedarville Road shall conform to the development standards of the I-3 Zone.
- “3. The initial 25 feet along the entrance road to the subject premises be landscaped and planted with trees.”

In 1982, the District Council granted approval of Special Exception SE-3272 on the northern portion of the Brandywine 301 Industrial Park for the excavation of sand and gravel. At that time, the southern portion was already an active sand and gravel operation under Special Exception SE-3064.

The 1993 Subregion V Approved Master Plan and Section Map Amendment retained the property in the I-1 and I-3 zoning categories.

The larger 170.5-acre parcel, known as Brandywine 301 Industrial Park, was subdivided as part of 4-91030 (PGCPB No. 91-256). Parcels 1 through 6, Block A and Parcels 1 through 6, Block B of the Brandywine 301 Industrial Park are contained in Plat Book 203-51, pursuant to Preliminary Plan 4-97124, which made minor changes to the prior approval. Several conditions were imposed.

C. **Master Plan Recommendations:**

2002 General Plan: The subject site is in the Developing Tier where the vision is to maintain a pattern of low- to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. This application is also in the area identified as a possible future center for Brandywine. The policy for centers is to promote development of mixed-residential and nonresidential uses at moderate-to high-densities and intensities in context with surrounding neighborhoods and with a strong emphasis on transit-oriented design. The subject site is within the designated Branch Avenue Corridor (with limited highway access). In such corridors, corridor nodes can extend one-quarter mile from designated interchanges. The General Plan also shows the subject site within the Brandywine (possible future) Community Center. The General Plan identifies a land use mix for employment and retail services in Community Centers as comprising between 5 to 50 percent of center land uses (page 49).

1993 Subregion V Approved Master Plan and SMA: The master plan map shows employment/ industrial use for the subject site located in Employment Area C (Brandywine/Mattawoman Industrial Area). "Employment Area C is a large, light and heavy industrial land use park that has direct access to MD 5 (F-9), a freeway, US 301 (A-64) an arterial road, and railroad access. The Natural Features and Environmental Facilities Map shows that a portion of the site south of Matapeake Business Drive is wooded, while the majority of the site north and east of this road is cleared. The master plan identifies a hiker/biker/equestrian trail at the southern end of Parcel 3. There are no historic resources identified. The only public facility identified in the plan is an existing 15–21-inch sewer line located south and east of the site within the Timothy Branch stream valley

D. **Request:** This application requests to rezone approximately 51 acres, comprised of Lots 19-23 Long's Subdivision (Plat Book 8-93) and Parcels 1-6, Block A and Parcels 1-6 and 8, Block B, Brandywine 301 Industrial Park, from the I-1 and I-3 Zones to the C-S-C Zone to allow development of an integrated commercial shopping center. The applicant requests the C-S-C Zone on the basis that a mistake was made when the parcel was retained in the I-1 and I-3 Zones at the time of the 1993 Subregion V Approved Master Plan & Sectional Map Amendment. The applicant also claims the request is supported by evidence of change in the character of the neighborhood. If the C-S-C Zone is approved, the applicant proposes building an integrated shopping center containing 500,000 square feet. The applicant believes the request will allow "...more and greater uses than permitted in the I-1 and I-3 Zones, offering increased diversity and quality in employment options...."

E. **Neighborhood and Surrounding Uses:** Planning principles typically consider neighborhoods as smaller units of a larger community. Significant natural features or major roads are normally accepted as logical boundaries to define neighborhoods. The applicant's defined neighborhood does not respect these principles nor the neighborhoods and subareas established in the 1993 Subregion V Master Plan. The staff agrees with the applicant's general neighborhood boundary description on the east side of US 301/MD 5. However, we disagree with the applicant's extension of the neighborhood boundary west of this US 301/MD to include the master plan's designated Brandywine Special Study Area. The District Council accepted US 301/MD 5 as an appropriate neighborhood boundary in the last rezoning application approving the I-1 and I-3 Zones for this site in 1985 (A-9502).

The 1993 master plan divides the planning area into several residential communities, which in turn are divided into several living areas comprised of villages. The Brandywine community, which includes the subject property, uses the road pattern to divide or separate the area into two

large villages containing five living areas (or neighborhoods) and seven discrete employment areas. The subject property is clearly identified within Employment Area C as delineated in the master plan along the east side of US 301/MD 5. The entire character of the neighborhood east of US 301/MD 5 is developing and has long been planned for employment-related uses.

The applicant, however, extends the neighborhood to the west of US 301/MD 5 and includes areas planned as part of the Brandywine Special Study Area primarily for residential use but with commercial retail, service, and employment uses along the highway frontage. Immediately opposite the subject property on the west side of the highway (north and south of Clymer Drive stub street) are approximately 13 acres in the C-S-C Zone, developed only with a freestanding liquor store at this time. North of this area are approximately 13 additional acres in the L-A-C Zone (A-9878) that are approved for approximately 115,800 square feet of retail space that will conveniently serve the adjacent Chaddsford mixed-use planned community that is under development. Frontage properties south of the liquor store are in the C-M Zone and are either developed with older commercial uses or remain undeveloped.

Staff defines the neighborhood using major transportation boundaries as utilized by the master plan. Also, there have been no rezoning applications approved within this neighborhood since adoption of the September 14, 1993 SMA. The subject property is in Planning Area 85A and there has only been one Euclidean zoning map amendment approved for the C-M Zone outside of the applicant's or staff defined neighborhood (A-9959). Neighborhood boundaries are as follows:

North: Brandywine Road

East: The Brandywine Village and Brandywine Heights residential neighborhood boundaries and the railroad right-of-way

South: Cedarville Road

West: US 301/MD 5 (a proposed freeway)

Within the staff defined neighborhood, the following land uses surround the subject property.

North: Approximately 18 subdivided lots in the I-3 Zone along the east side of US 301/MD 5 that are partially developed with dwellings, some of which have been converted to business use. To the rear of these lots and north of the I-1 zoned portion of the subject property are several large parcels in the I-1 Zone that are used for modular building/trailer storage and lease. North of these parcels and Timothy Branch Drive (paper street) are a variety of small parcels used for vehicle storage, repair and salvage operations in the I-3 and I-1 Zones.

East: Undeveloped parcels within the Brandywine 301 Industrial Park in the I-1 Zone, followed by undeveloped land in the I-2 Zone.

South: I-1-zoned properties developed with miscellaneous commercial service uses and a large warehouse in the I-1 Zone.

West: US 301/MD 5.

F. **Zoning Requirements:**

1. **Section 27-157(a) of the Zoning Ordinance provides that no application shall be granted without the applicant proving that either:**
 - (A) **There has been a substantial change in the character of the neighborhood; or**
 - (B) **Either**
 - (i) **There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment, or**
 - (ii) **There was a mistake in the current Sectional Map Amendment.**

Applicant's Position: The applicant asserts that the requested zone is warranted because a mistake was made when the parcel was retained in the I-1 and I-3 Zones by the 1993 Master Plan and SMA and/or there has been a change in the character of the neighborhood. The applicant's defined neighborhood extends to the west of US 301/MD 5 and is relied upon to substantiate the assertion of change/mistake. The applicant puts forth the following in support of these assertions:

1. The applicant believes their defined neighborhood is "...consistent with the delineation of 'Employment Area C' and the 'Brandywine Special Study Area' as defined by the master plan. As the Maryland Court of Appeals has held, neighborhood areas delineated on a master plan may be recognized as an appropriate neighborhood in considering a zoning classification request." The applicant also asserts that the area is appropriate for the master plan's designated "Neighborhood Activity Center" and/or "Community Activity Center" due to the placement of these symbols on the plan map in the vicinity of the subject site. They state that the subject site is within a neighborhood that included planning for both activity centers as well as being across from land planned for other commercial uses in the C-S-C Zone. They believe the facts that supported zoning the west side of the highway to the C-S-C Zone equally support rezoning the subject site.

Staff Comment: As discussed under Section E above, the subject site is entirely within Employment Area C, an employment area or neighborhood entirely separate from the area or neighborhood identified for the Brandywine Special Study Area which is primarily designated for residential development. Besides being separated by a major road (planned freeway), each area has its own specific land use vision, policies, and recommendations that clearly identify the types of land uses envisioned by master plan. The designated activity centers and other C-S-C zoned land are outside of the staff defined neighborhood and are within the designated Brandywine Special Study Area on the west side of US 301/MD 5. The area west of the highway, including the master plan recommendations relative to this area, should have no bearing on this request. We note that the neighborhood activity center referred to is approved for approximately 115,800 square feet of retail commercial development in the L-A-C Zone.

2. The applicant notes that the 1993 SMA was intended to implement master plan land use recommendations for the foreseeable future, generally considered to be 6 to 10 years (master plan page 189). They also note that certain master plan land use recommendations have not yet developed (e.g., the Brandywine Community Activity Center). The applicant cites zoning changes occurring between the 1978 SMA and 1993 SMA. However, these changes have no bearing upon the issue of change or mistake since the last SMA in 1993.

Staff Comment: It has been 12 years since the master plan and SMA were approved/adopted for the purpose of bringing zoning and land use into conformance with the principles of orderly comprehensive land use planning and staged development. The purposes for initiating an SMA according to Section 27-220, in part, is to limit piecemeal rezoning to cases where there is a clear legal mandate that the applicant's property rights would be denied if zoning was withheld; cases where there is a pressing public interest; cases involving certain Comprehensive Design and Mixed Use Zones; and cases where the applicant demonstrates that a clear mistake was made in the original zoning or subsequent rezoning by adoption of a SMA. In all instances, staff asserts the following:

- This piecemeal zoning application has failed to demonstrate denial of property rights. In fact, the property owner originally had the property rezoned to the existing I-1 and I-3 Zones in 1985 because they could not develop it in the previously existing E-I-A Zone. They have since subdivided and installed site infrastructure in the existing zones. Now it is claimed that C-S-C zoning is more appropriate because land planned for retail use elsewhere in the planning area has not yet developed. The applicant believes the subject site is appropriate now for such use, simply because the market for employment land use has lagged expectations.
- There is not a demonstrated pressing public interest in rezoning the site at this time.
- There is no evidence of a clear mistake made by the District Council in keeping the I-1 and I-3 Zones on the subject site during the last comprehensive rezoning in 1993. There were no claims during the 1993 SMA that the I-1 and I-3 Zones were inappropriate for the subject site.
- A comprehensive design zone, although originally approved for the subject site, is not requested.

Staff notes that a Subregion V master plan and SMA amendment is in the proposed M-NCPPC Planning Department Budget for FY 2007.

3. The applicant asserts that master plan employment recommendation for the subject site is inappropriate in that such uses do not achieve a master plan objective to encourage an employment base that "...represents the highest level and range of activities that can be achieved." They contend that the requested C-S-C Zone meets master plan objectives to create "...more diversity in job opportunities and enhance the economic base of the County and Subregion"(citing master plan page 65). They contend the proposed retail use will generate approximately 900 employees and offer higher quality employment than industrial use. They refer to the list of uses allowable in each zone and conclude that the C-S-C Zone provides a "wider range of uses to achieve the County's goals for the Subregion." They also assert that industrial use on the subject site will impede a master plan objective for making every effort to ensure a high image development along the regional highway (citing master plan page 81). A final point is made that a change in zoning from one commercial subcategory to another requires less stringent findings than a change in zoning from one use category to another.

Staff Comment: As the master plan indicates (page 81): " 'Employment Area 'C' is a large, light and heavy industrial land use park which has direct access to regional highway and railroad systems...The landowners, the county, and the State should not squander the opportunity to

achieve development of a regional significance...Every effort should be made to ensure that only high image development takes place along the regional highway corridor.” The master plan indicates that the reserve of properly zoned land in designated employment areas will allow the county to better compete with other locations within and outside the metropolitan area (master plan page 66).

The applicant provides no evidence that the site will not eventually produce the highest level and range of activities or diversity of job opportunities in the existing employment zones as envisioned by the master plan. Likewise there is no indication that development of retail uses is more likely to occur on the subject property than would on other commercial sites outside of the defined neighborhood. Also, while the applicant estimates 900 employees in the C-S-C Zone, the master plan suggests approximately 720 employees for the subject site, based on employment acreage and estimated employees in the Brandywine community (see Table 11, page 66). The applicant provides nothing to support the claim that retail offers a higher quality of employment opportunities than could be achieved in existing zoning.

In approving the current zoning in 1985, the District Council placed the frontage lots along US 301/ MD 5 in the I-3 Zone for a depth of 500 feet to ensure that development occurs in accordance with required site plan review and other standards not required in the I-1 Zone. We note that the requested C-S-C Zone does not require site plan review and potentially could result in less than the desired image along the highway.

Lastly, staff believes that this is not a requested rezoning from one industrial zone to another industrial zone subcategory where a more liberal interpretation of change in use is acceptable. Rather it is a requested rezoning from one use category (industrial) to another (retail commercial). Accordingly, as typical of piecemeal rezoning applications, approval of this request will establish a precedent that demonstrates change in the character of the neighborhood and justification for additional zoning changes. Not only is this outcome typical, but also approval of the request may well impact the investment decisions others have made in anticipation of developing their property for retail uses in accordance with master plan recommendations. Also, the master plan stresses that incompatible uses should be prohibited from employment areas because incompatible uses compromise the ability to efficiently use such employment centers (master plan page 66). A shopping center on the subject property is less likely to be compatible with future industrial and employment uses and related traffic that will occur elsewhere in this employment area.

4. The applicant contends master plan assumptions related to population growth have been exceeded, “...making the area even more retail deficient and overdue for retail development.” As support, they cite the master plan projection of county population in 2010 (840,921 people) had been exceeded by 2004 (842,967 people). Further they compare the master plan projection for the Subregion (53,922 people in 2010) to their research of growth in a seven-mile radius from the subject site (116,775 people in 2004). They claim these “estimate mistakes” impacted the facts on which the District Council based decisions to retain existing zoning for the site in the 1993 SMA. Because of this, together with the “...failure for industrial to attract robust employment, increased residential growth, and little new retail, they [District Council] would have zoned the property C-S-C.”

Staff Comment: Staff has examined the applicant’s growth analysis by examining countywide traffic analysis zones with Subregion V planning area boundaries. Based on the Cooperative Forecast Round 7, 2005 county population is estimated at 852,884. We agree with the applicant that the master plan underestimated countywide population growth. However, Round 7 estimates

of population growth in the Subregion projects 51,033 people in 2010. Thus, in fact, the expected Subregion population growth by 2010 is now less than projected by the 1993 master plan by 2,889 people. Contrary to the applicant's claim, this reduction in Subregion population should lessen the claimed deficit of demand for retail space; indicating all the more reason to support Council zoning actions in 1993.

As mentioned above, approval of this request could jeopardize the economic investment of others in the area to develop retail uses based on the zoning approved in 1993. In fact, the 13 acres across US 301/MD 5 in the L-A-C Zone is approved for 115,800 square feet of retail and another vacant 13-acre C-S-C zoned parcel is adjacent to the L-A-C zoned site. We also observe that the applicant's seven-mile radius study extends approximately five-miles into Charles County, to include the Waldorf area, and cannot reasonably be used to justify this request, especially with 26 acres of yet to be developed retail space across the highway in the Brandywine Special Study neighborhood.

Staff fails to see the rationale in the argument that more retail space is needed when the retail market in the Subregion is just now starting to strengthen with new residential development occurring in the Brandywine Special Study Area (e.g., Chaddsford). The proper location for retail use is on the west side of the highway where retail zoning exists and residential development is evolving. Retail on the subject property will encourage the mixing of local and through traffic as residents in the Brandywine Special Study Area cross US 301/MD 5 to access retail on the subject site. Perhaps with more residential development in the area, the market for employment activities on the subject site will increase as long anticipated. In so doing, contrary to the applicant's claim, employment use on the subject site will further master plan efforts to support industrial land use to "...balance the bedroom community, adjust commuter travel patterns and bolster the County tax base" (master plan page 81). Perhaps residents would remain in their neighborhoods on the west side of US 301/MD 5 and shop in the centers developed on sites presently zoned for retail use.

5. The applicant believes the 2002 General Plan corrects the mistakes of the 1993 master plan by designating the property within the Brandywine Community Center and MD 5 Corridor policy overlays. They quote the General Plan description of this Center: "The Brandywine Center is located on both sides of MD 5/US 301.... On the east side is a partially developed employment area. On the west side is the Brandywine Special Study area...recommended for a mix of residential, employment and retail uses." The applicant claims the General Plan confirms the mistake the District Council made in 1993 in keeping the subject property in industrial zoning by "...recommending the site for future mixed-use development, including retail, but not industrial uses."

Staff Comment: There is nothing in the General Plan's description of the future Brandywine Community Center (page 103) that indicates industrial use is not appropriate for the Center. Neither does the General Plan determine whether industrial or retail zoning is appropriate or not for the subject site. In fact, the description calls for a mix of residential, employment and retail uses. This leads the Community Planning Division to advise that the proposed use [zoning] is not inconsistent with Development Pattern policies for the Developing Tier and a possible future Center (April 10, 2006, memorandum). The policy for Centers is to promote development of mixed-residential, and nonresidential uses at moderate-to high-densities and intensities in context with surrounding neighborhoods and with a strong emphasis on transit-oriented design. The memorandum goes on to determine that regardless of little industrial development in Employment Area 'C' since 1993, "...the proposed shopping center use does not conform to the master plan recommendation for employment-industrial land use."

Because the General Plan does not make specific zoning or land use recommendation for the subject site or other land on either side of US 301/MD 5, it will be the task of a future master/sector plan to implement the General Plan's policy guidance for this subregion. The Planning Board has approved initiation of a master plan amendment in FY 2007 for just such a purpose. Any determinations as to whether the land use policies and zoning approved in 1993 are still valid should not be made on a piecemeal basis where decisions could have unanticipated consequences for those who relied upon existing master plan policies. Rather, such determinations should be deferred and decided during the detailed local planning process for the master plan amendment.

G. **Conformance with the Purposes of the C-S-C Zone:** The purposes of the C-S-C Zone are contained in Section 27-454(a)(1) of the Zoning Ordinance and are as follows:

- (A) **To provide locations for predominantly retail commercial shopping facilities;**
- (B) **To provide locations for compatible institutional, recreational and service uses;**
- (C) **To exclude uses incompatible with general retail shopping centers and institutions;
and**
- (D) **For the C-S-C Zone to take the place of the C-1, C-2, C-C and C-G Zones.**

The subject property could conform to most of the above purposes. However, the proposed rezoning to the C-S-C Zone at this location will allow uses that conflict with the 1993 Master Plan recommendations for employment use. Also, there is no evidence presented by the applicant demonstrating that C-S-C zoning and the activities allowed therein will be compatible with the industrial land uses developed elsewhere along Matapeake Business Drive in this large employment park. This is an important consideration since all of the Brandywine Industrial Park is not a part of this rezoning request.

CONCLUSION

The applicant has not demonstrated evidence of a substantial change in the character of the neighborhood since the last SMA in 1993 to justify this request. In fact, the applicant's defined neighborhood does not correspond to principles used in determining master plan neighborhoods or that respect the neighborhood boundary defined in the last piecemeal rezoning of the subject site in 1985 (A-9502-C). Furthermore no evidence of zoning, land use, transportation, demographic, or other changes are presented that demonstrate substantial change in the character of the neighborhood from that intended by the 1993 master plan. The lack of either industrial employment or retail development has no bearing on elements of neighborhood change because the master plan provides for eventual development of such uses in appropriate areas designated on the plan map. The subject property is not a part of a commercial center for Subregion VI, but is a part of the planned employment community. Neither does slight changes (up or down) in projected Subregion or county population constitute change or a rationale for claiming mistake.

Overall, there has been no convincing evidence presented that demonstrates that the initial premises the Council relied upon in approving the last SMA were incorrect to the extent that a different zoning decision would have been made. Nor has meaningful evidence been presented that indicates events occurring subsequent to the last SMA would show that the Council's assumptions and premises proved invalid with the passage of time. No substantive changes have occurred with respect to the planned future character of the neighborhood or the land uses recommended by the master plan, other than the fruition of some residential and employment development as recommended by the master plan,

and the desires of a new developer for the subject property. Neither justifies the rezoning of this property through this zoning application. Such decisions are best left for consideration during the next master plan amendment process, wherein all stakeholders can equally participate in determining what if any changes are warranted in the vicinity of the subject site.

Based on the above determinations, it is recommended that this requested zoning map amendment A-9980 be DENIED.